

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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BRENDA WILLIAMS,

Plaintiff,

1:18-cv-0349 (BKS/CFH)

v.

WILLIAM NORRIS, *Narcotic C.R.U.—  
Badge #2468, et al.*,

Defendants.

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**Appearances:**

*For Plaintiff:*  
Brenda Williams, *pro se*  
Albany, NY 12209

**Hon. Brenda K. Sannes, United States District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Presently before the Court is a Report-Recommendation by United States Magistrate Judge Christian F. Hummel issued on April 5, 2019, following his review of Plaintiff's Second Amended Complaint under 28 U.S.C. § 1915(e)(2)(B). (Dkt. No. 15). Magistrate Judge Hummel recommended: (1) that Plaintiff's Proposed Second Amended Complaint, (Dkt. No. 12), be accepted for filing as the operative pleading in this action; (2) that all claims against the City of Albany and Albany County Police Department be deemed stricken from the Second Amended Complaint because Plaintiff failed to cure the defects identified by the Court as to the claims against these defendants, and that these claims be dismissed with prejudice and without leave to amend; (3) that Plaintiff's Fourth Amendment false arrest claim proceed; (4) that Plaintiff's Second Amended Complaint be read as setting forth claims for Fourth Amendment excessive property damage and property seizure, and that such claims be permitted to proceed pursuant to

this Court's earlier Orders, (Dkt. Nos. 4, 5, 11, 14); (5) that Plaintiff not be permitted to further amend the complaint without first requesting leave of the Court, and should Plaintiff file an amended complaint without leave, such filing be deemed stricken from the docket; and (6) that the remaining claims are limited to: (i) Fourth Amendment excessive property damage relating to plaintiff's personal property, (ii) Fourteenth Amendment excessive force relating to defendant Gavigan pointing a gun at Plaintiff's head, (iii) Fourth Amendment illegal search, (iv) Fourth Amendment false arrest, and (v) Fourth Amendment illegal seizure relating to failure to return Plaintiff's personal property, and that all other claims be deemed stricken pursuant to this Court's earlier orders and the failure to cure defects identified therein, (Dkt. Nos. 4, 5, 11, 14).

Magistrate Judge Hummel advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 15, at 12–13).

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

**ORDERED** that the Report-Recommendation, (Dkt. No. 15), is **ADOPTED** in its entirety; and it is further

**ORDERED** that plaintiff's Proposed Second Amended Complaint, (Dkt. No. 12), is accepted for filing and is the operative pleading in this action<sup>1</sup>; and it is further

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<sup>1</sup> The Clerk is directed to amend the docket to refer to this filing as the Second Amended Complaint.

**ORDERED** that all claims against the City of Albany and Albany County Police Department are deemed stricken from the Second Amended Complaint because Plaintiff has failed to cure the defects identified by the Court as to the claims against these defendants, and that these claims are **DISMISSED** from this action **with prejudice** and without leave to amend; and it is further

**ORDERED** that plaintiff's Second Amended Complaint be read as setting forth claims for Fourth Amendment excessive property damage and property seizure, and that such claims will proceed; and it is further

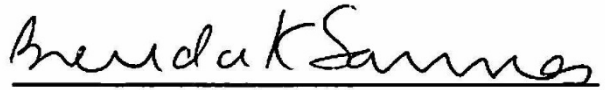
**ORDERED** that the Second Amended Complaint be served upon Defendants, and that the remaining claims are limited to: (1) Fourth Amendment excessive property damage relating to Plaintiff's personal property, (2) Fourteenth Amendment excessive force relating to defendant Gavigan pointing a gun at Plaintiff's head, (3) Fourth Amendment illegal search, (4) Fourth Amendment false arrest, and (5) Fourth Amendment illegal seizure relating to failure to return Plaintiff's personal property, excluding property not belonging to Plaintiff; and that all other claims are deemed **STRICKEN** pursuant to this Court's earlier orders and the failure to cure defects identified in those orders; and it is further

**ORDERED** that Plaintiff is not permitted to further amend the complaint without first requesting leave of the Court, and if plaintiff files an amended complaint without leave, the filing will be deemed stricken from the docket; and it is further

**ORDERED** that the Clerk of the Court promptly return the case to the Magistrate Judge for service of summonses and complaint on the remaining Defendants by the United States Marshals pursuant to N.D.N.Y. Local Rule 5.1(g); and it is further

**ORDERED** that the Clerk serve a copy of this Order upon the Plaintiff in accordance with the Local Rules.

**IT IS SO ORDERED.**

  
Brenda K. Sannes  
Brenda K. Sannes  
U.S. District Judge

Dated: May 30, 2019  
Syracuse, New York